

ORIGINAL

DIVISION OF CONSUMER ADVOCACY  
Department of Commerce and  
Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813  
Telephone: (808) 586-2800

PUBLIC UTILITIES  
COMMISSION

2010 JAN -5 P 3:36

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval of Rate Increases and Revised )  
Rate Schedules and Rules. )

DOCKET NO. 2008-0083

**DIVISION OF CONSUMER ADVOCACY'S**  
**OPENING BRIEF**

AND

**CERTIFICATE OF SERVICE**

JON S. ITOMURA  
DIVISION OF CONSUMER ADVOCACY  
DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS  
250 South King Street, Room 825  
Honolulu, Honolulu 96813  
Telephone: (808) 586-2800  
Facsimile: (808) 586-2780

## **TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>II.</b>	<b>BACKGROUND .....</b>	<b>3</b>
<b>III.</b>	<b>THE PARTIES' SETTLEMENT RESOLVES THE MAJORITY OF THE ISSUES .....</b>	<b>6</b>
<b>A.</b>	<b>CIP CT-1 COSTS ARE EQUITABLY RESOLVED IN THE SETTLEMENT .....</b>	<b>8</b>
<b>B.</b>	<b>HCEI EMPLOYEES/COSTS ARE EQUITABLY RESOLVED IN THE SETTLEMENT.....</b>	<b>14</b>
<b>C.</b>	<b>HCEI NON-LABOR EXPENSES ARE EQUITABLY RESOLVED IN THE SETTLEMENT .....</b>	<b>16</b>
<b>IV.</b>	<b>RETURN ON EQUITY.....</b>	<b>17</b>
<b>A.</b>	<b>CAPITAL STRUCTURE.....</b>	<b>17</b>
<b>B.</b>	<b>COST RATES FOR FIXED COST CAPITAL ITEMS.....</b>	<b>18</b>
<b>C.</b>	<b>COST OF COMMON EQUITY .....</b>	<b>19</b>
<b>D.</b>	<b>IMPACT OF DECOUPLING AND OTHER RATE MECHANISMS.....</b>	<b>21</b>
<b>V.</b>	<b>INFORMATIONAL ADVERTISING .....</b>	<b>22</b>
<b>VI.</b>	<b>MANAGEMENT AUDITS .....</b>	<b>28</b>
<b>VII.</b>	<b>DECOUPLING, ECAC AND PPAC RATE ADJUSTMENTS .....</b>	<b>30</b>
<b>VIII.</b>	<b>CONCLUSION AND RECOMMENDATION.....</b>	<b>32</b>

In the Matter of the Application of )  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval of Rate Increases and Revised )  
Rate Schedules and Rules. )

For Approval of Rate Increases and Revised )  
Rate Schedules and Rules. )

## 1

equity ("ROE") and the appropriate level of informational advertising expense to be included in HECO's revenue requirement. The manner of resolution of the many issues was meticulously documented within the Stipulated Settlement Letter ("Settlement") that was filed on May 15, 2009 and an accompanying 90-page Exhibit I, specifying the details of agreements reached in each area originally disputed by the Parties. The Parties intended that the remaining disputes regarding ROE and Informational Advertising be resolved through evidentiary hearings before the Commission. On May 18, HECO filed its Statement of Probable Entitlement ("SPO") based upon the Settlement that was supportive of an Interim Rate Increase in the amount of \$79.8 million.

The Public Utilities Commission of the State of Hawaii ("Commission" or "PUC") did not approve the Settlement or HECO's May 18<sup>th</sup> SPO. Instead, several new ratemaking issues, beyond the disputed ROE and advertising issues between the parties, were raised by the Commission in its Interim Decision and Order ("Interim") issued in this Docket on July 2, 2009.<sup>2</sup> In response, HECO revised its SPO to reduce the Interim Rate Increase to \$61.2 million in conformance to the findings within the Interim. HECO also submitted extensive Supplemental Testimony in response to the new issues raised in the SPO and explained its position on these new issues in the Panel Hearings. The Consumer Advocate's Supplemental Testimony was more limited

---

<sup>2</sup> The new issues raised in the July 2, 2009 Interim Decision & Order included expenses for HCEI staffing and non-labor HCEI outside services expenses for because the Commission had not yet approved HCEI programs, investment and expenses related to Campbell Industrial Park CT-1 ("CIP CT-1"), the employee electric rate discount, certain merit wage increases and commodity price escalations. Additionally, the parties were invited to submit Supplemental Testimony on the employee count, Purchased Power Adjustment Clause ("PPAC"), CIP CT-1 cost overruns, Energy Cost Adjustment Charge ("ECAC"), IRP/DSM, rate design, Non-merit wage increases, cost allocations, management audits and overall expense increases.

in scope and explained how the Settlement was achieved, noting that HECO's revisions to the SPO complied with the Interim findings, and addressed certain policy matters raised in the Interim. For this brief, the Consumer Advocate considered offering a comprehensive discussion of each item, including those already agreed to among the Parties as well as the issues raised by the Commission, but believes that such an effort might be viewed as reneging on the Settlement. While the Consumer Advocate acknowledges the Commission's ability to accept in part or in whole any settlement agreement submitted for the Commission's consideration, the Consumer Advocate believes that there is merit to the settlement process and does not wish to undermine the efforts by the Parties to offer a reasonable compromise for the Commission's consideration. Thus, similar to its Supplemental Testimonies the Consumer Advocate's Opening Brief will be limited in scope, recognizing that HECO is responsible for summarizing how its Supplemental Evidence is responsive to the new issues raised in the Interim. The Consumer Advocate's Opening Brief will focus upon explaining why the Settlement should serve as the basis for the Commission's Final Order in this Docket.<sup>3</sup>

## **II. BACKGROUND.**

On July 3, 2009, HECO filed its application seeking approval by the Commission for rate increases and revised rate schedules and rules.

---

<sup>3</sup>

In the panel hearings, HECO counsel identified further downward adjustments to the Settlement revenue requirement that should be recognized, due to economic conditions and other considerations that would reduce the revenue increase by approximately \$5 million if recognized. Tr. 1380-1381. These downward revisions are not reflected in the Settlement.

On July 29, 2008, the Department of the Navy, on behalf of the DOD, filed its motion to intervene.

Pursuant to Commission's Order issued on August 20, 2008, the Commission granted DOD's intervention.

Pursuant to the Commission's Order, issued on October 31, 2008, the Commission denied motions to intervene filed on behalf of Walmart and Hawaii Commercial Energy Customer Group and determined that HECO's completed application date was July 3, 2008.

Between November 26, 2008 and December 26, 2008, HECO filed with the Commission, twelve (12) cumulative sets of rate case updates ("Updates").

On January 12, 2009, the Commission issued its Order Extending the Date of Completeness of Application from July 3, 2008 to December 26, 2008 to allow the Consumer Advocate and the DOD sufficient time to review HECO's voluminous updates incorporating significant substantive changes to HECO's Direct Testimonies.

On January 21, 2009, the Commission issued its Order Amending Stipulated Procedural Order filed on January 15, 2009 to reflect that the Interim Decision and Order would be filed on July 2, 2009.

On May 15, 2009, the Parties filed their Stipulated Settlement Letter. The Settlement represented a negotiated compromise on the issues and matters and was entered into with the intent to simplify and expedite the rate case proceeding. The Parties expressly reserved their rights to take different positions regarding the negotiated issues and matters therein in other proceedings before this Commission.

The Parties settled on all but two unresolved issues between the Parties. The two issues included the following: 1) the appropriate amount to be recovered through base rates for Informational Advertising costs and 2) the determination of a reasonable cost of capital or more specifically, the ROE.

On May 18, 2009, HECO filed its Statement of Probable Entitlement with agreement amongst the Parties on the amount of \$79,820,000 or 6.16% over revenues at current effective rates.

The Commission's Interim, filed July 2, 2009, provided that the Parties needed to supplement the record in this docket on settled issues and the Commission raised concerns regarding employee electricity discounts, staffing and wage rates during recessionary periods. The Commission also excluded HCEI-related costs and other costs including CIP CT-1 related costs<sup>4</sup> from interim rates. Thus, the requested \$79,820,000 identified in the SPO was reduced accordingly and applicable revised schedules were sought by the Commission.

The evidentiary hearing was held on October 26 through November 4, 2009.

On November 19, 2009, HECO filed its Motion for Second Interim Increase for CIP CT-1 Revenue Requirements, or in the Alternative, to Continue Accruing AFUDC for the CIP CT-1 Project ("Motion for Second Interim Increase").

---

4

Costs related to CIP CT-1 were excluded because the Commission expressed concern that HECO negotiated pricing and terms which were not reasonable nor prudent and not in the public's interest in denying HECO's application for approval of a Biodiesel Supply Contract dated August 13, 2007 between HECO and Imperium Services, LLC. See, Docket No. 2007-0346, Decision and Order, at 18-19 ("Imperium Decision and Order"). Further, the Commission indicated that if CIP CT-1 did not have a viable biofuel source, it was not evident that CIP CT-1 could be deemed used and useful.

On December 1, 2009, the Consumer Advocate filed its comments responding to HECO's Motion for Second Interim Increase. The Consumer Advocate stated no objection to HECO's proposed second interim revenue increase for recovery of CT-1 costs, provided that such revenue increase is calculated in a manner consistent with the Settlement, as more fully described herein. The Consumer Advocate did object to HECO's proposed alternative relief in the form of continued AFUDC for the CT-1 investment because such relief is inconsistent with the Settlement Agreement and would likely yield excessive future charges to HECO ratepayers while creating precedent for a new form of rate relief that has not been supported in the evidentiary record in this Docket.

### **III. THE PARTIES' SETTLEMENT RESOLVES THE MAJORITY OF THE ISSUES.**

HECO's rate case filing and requested rate increase is driven primarily by the combination of increasing expenses, declining energy sales revenues and the 2009 completion of a major new generating resource that was previously approved by the Commission, CIP CT-1. In its Updates, the rate of decline in HECO's electric sales became more acute, while further expense increases and increased staffing needs were identified in connection with the Energy Agreement. A number of revenue requirement scenarios were presented by HECO in its Rate Case Update T-23, Attachment 1. This Attachment indicated a HECO-asserted revenue requirement of \$100.0 million over currently effective rates, if the recent declines in energy sales and certain HCEI study costs are not included within the base rate increase. Upon full recognition of the energy sales decline and HCEI study costs, HECO's revenue requirement would have been



\$113.9 million.<sup>5</sup> However, even this value does not capture the much higher pension expenses that are subject to deferral accounting and rate recovery tracking, as explained by Mr. Carver in CA-T-3 and in CA ST-3.<sup>6</sup> When pension costs are considered in the revenue requirement, as proposed by the Consumer Advocate, this further expense change increased HECO's revenue requirement by an additional \$15.7 million, for a combined total of potential revenue increase over currently effective rates of \$129.6 million.<sup>7</sup>

Relative to a \$129.6 million revenue overall revenue increase exposure, the Settlement provides for a revenue increase of approximately \$79.8 million,<sup>8</sup> including full recognition of the higher pension costs that are subject to recovery tracking and the lower energy sales revenues that are also subject to tracking if the Revenue Balancing Account ("RBA") decoupling mechanism is approved in Docket No. 2008-0274.<sup>9</sup> The

---

<sup>5</sup> In Rate Case Update T-23, Attachment 1, column 2 shows HECO's revenue requirement of \$100.0 million at the line captioned "Revenue Increase." Column 2 includes the CT-1 unit at "Full Cost" but does not include the cost of "HCEI Implementation Studies" or the "Sales reduction." The incremental revenue requirement arising from HECO annualized "Full Cost" treatment of CT-1 can be isolated by comparing the column 4 revenue increase of \$88.2 million to the column 2 increase of \$100.0 million and is \$11.8 million. Column 8 displays the "Revenue Increase" of \$102.1 million needed to account for the "HCEI Implementation Studies" and the "Sales Reduction" but does not include CT-1 at Full Cost. Adding the incremental \$11.8 million to annualize CT-1 to this value indicates a potential HECO revenue requirement of \$113.9 million.

<sup>6</sup> See Settlement, Exhibit 1, pages 52-53 and CA-ST-3, pages 23-35.

<sup>7</sup> The pension increase was fully captured in the Settlement in this case, so as to reduce future pension tracking costs subject to deferral and rate recovery in future HECO proceedings. CA-T-1 at page 10 summarizes the major issues in this Docket and shows how immediate recognition of the sales reduction and pension cost increases contribute \$12.3 million and \$15.7 million, respectively, to the Consumer Advocate's recommended revenue increase for HECO.

<sup>8</sup> Settlement dated May 15, 2009 at page 2.

<sup>9</sup> In Docket No. 2008-0274, HECO, Maui Electric Company, Limited ("MECO"), and Hawaii Electric Light Company, Inc. ("HELCO") (collectively referred to as "HECO Companies") are seeking to implement decoupling using a RBA and Rate Adjustment Mechanism ("RAM").

Consumer Advocate believes that this “apples to apples” basis of comparison is important to add perspective to the Settlement that was achieved by the parties. The Settlement was acceptable to the Consumer Advocate because it incorporated most of the ratemaking adjustments advocated by the Consumer Advocate witnesses while setting for hearings only the two most contentious issues that could not be resolved through negotiations – the ROE and informational advertising issues. The Consumer Advocate submits that the Commission should recognize and approve the unanimous settlement of rate case issues that is carefully documented in the Settlement and corresponding Exhibits and under no circumstances should allow HECO increased revenues in excess of levels set forth in the Settlement.<sup>10</sup>

**A. CIP CT-1 COSTS ARE EQUITABLY RESOLVED IN THE SETTLEMENT.**

The Settlement is notable in its handling of the costs for CIP CT-1. Ratepayers receive considerable protection from excessive cost responsibility for CT-1, because this new unit is conservatively valued for inclusion within the revenue requirement in the Settlement based on HECO's prior estimated completion cost for CT-1 of \$163 million.<sup>11</sup> Importantly, the revenue requirement in the Settlement provides for a return on only one-half of this lower rate case cost estimate for CT-1 and provides for O&M expense recovery at CT-1 for only part of the test year, using average test year ratemaking conventions. The Settlement includes no depreciation expenses on CT-1 in the test

---

<sup>10</sup> In the panel hearing, HECO indicated its acceptance of further reductions to the Settlement Revenue requirement. See footnote 2.

<sup>11</sup> Tr. 449.

year because depreciation accruals do not commence on HECO's books until 2010.<sup>12</sup> As long as CT-1 is determined to be in service and used and useful to ratepayers at any time within 2009, inclusion of the investment in year-end rate base is appropriate, as recognized in the revenue requirement computations within the Settlement.

The Commission noted in the Interim a concern regarding whether CT-1 should be considered used and useful within the test year and that date at which the new unit was actually in-service.<sup>13</sup> Consumer Advocate's witness Mr. Brosch explained in the panel hearing how CT-1 investment costs, given the problems with biofueling the unit, could be included in rate base and earn a return as Plant Held for Future Use ("PHFFU") in keeping with the Commission's past treatment of PHFFU assets.<sup>14</sup>

In HECO's Application for approval to commit funds for the installation of CT-1 in Docket No. 05-0145, the Consumer Advocate found CT-1 was needed to satisfy HECO's *reliability planning requirements*, and was the *right size and type of unit to do so*. The Consumer Advocate negotiated a Joint Stipulation which involved HECO committing to operate CT-1 on bio-fuels.<sup>15</sup> The Joint Stipulation provided that CT-1 would go through acceptance testing using fossil fuels to ensure equipment specifications, warranty and air permit requirements were satisfied. After initial operations on fossil fuel, the Joint Stipulation provided CT-1 would be then tested using biofuels to gather information, including emissions data for modifying the air permit to

---

<sup>12</sup> This accounting treatment reflects HECO's standard accounting procedures of not including depreciation expense for a capital item until the year after it is placed in service.

<sup>13</sup> Interim Decision & Order, page 10.

<sup>14</sup> Tr. 426-429.

<sup>15</sup> See D&O 23456 pages 28-32.

operate CT-1 on bio-fuels. The Stipulation provided that upon issuance of an air permit modification for bio-fuels CT-1 would then be required to run on solely on bio-fuels. For purposes of this rate case, CT-1 was modeled to operate on fossil fuel from August through November of the test year, and then on bio-fuels for December 1 – 14, 2009.<sup>16</sup> Accordingly, the Consumer Advocate modeled CT-1 as used and useful during the test year, operating on fossil fuel but for the testing CT-1 on biofuels to obtain information needed for air permit modification consistent with the Joint Stipulation. The ECAC has separate sales heat rates by type of fuel, including bio-fuels, allowing the appropriate pass-through of fuel prices whether CT-1 is operated on fossil fuels or bio-fuels. Thus for purposes of Settlement the Consumer Advocate assumed that CIP CT-1 would be used and useful in order to address the reliability issues identified in Docket No. 05-0145.

The Commission also expressed concern regarding the cost overruns within HECO's CT-1 updated cost reports, which now indicate a much higher expected completion cost estimate of \$193 million.<sup>17</sup> Considerable discussion of the reasons for CT-1 cost overruns occurred in the panel hearings.<sup>18</sup> As noted previously, HECO's rate case position was that its prior and much lower estimated investment in CT-1 should be

---

<sup>16</sup> Tr. Pages 413-425.

<sup>17</sup> To place this issue in perspective, HECO's original estimated cost for CIP CT-1 as set forth in Docket No. 05-0145 was \$134,310,260 (Application, page 1). As set forth in the Commission's Decision and Order No. 23457, filed on May 23, 2007, the approved amount had increased to \$137,430,260. However, the most current estimate is \$193,040,000 as identified in HECO's cost report filed on October 2, 2009. This represents an increase of approximately \$59,000,000.

<sup>18</sup> Interim Decision & Order, page 14. Panel Hearing Tr. 468-506.

annualized and fully included in rate base and O&M.<sup>19</sup> In contrast, the Consumer Advocate and DOD recommended a more traditional average rate base treatment of this lower level of estimated CIP CT-1 investment costs, with only a partial year of O&M recovery.<sup>20</sup> The Consumer Advocate's position was incorporated within the Settlement and has the effect of moderating the rate impact of CIP CT-1, while maintaining consistency with the average rate base concept. HECO accepted this approach in Settlement because the Company expects to recover the full cost of CIP CT-1 through the RAM that is pending Commission approval in Docket No. 2008-0274,<sup>21</sup> but such recovery would be limited to the Commission-approved cost for the investment and would remain subject to refund if such costs are later found to be imprudent or excessive.<sup>22</sup>

In the Panel Hearing, the Commission explored a range of hypothetical alternative treatments for CT-1 cost recovery, including a potential second interim rate increase using either averaged or annualized costs for the investment, and scenarios of continuation of AFUDC and/or deferral of depreciation.<sup>23</sup> These alternative treatments

---

<sup>19</sup> HECO initially proposed a step rate increase for the annualized cost of CT-1. See HECO T-1, pages 12-20.

<sup>20</sup> This issue is explained in CA-T-3, pages 9-17. Revenue requirement is reduced by approximately \$11.8 million under the Consumer Advocate's approach, as set forth in CA-T-1 in the data table on page 10.

<sup>21</sup> See Settlement, Exhibit 1, page 88, paragraph 52.

<sup>22</sup> Because of regulatory reliance on a forecast test year, the final actual cost of constructing CT-1 could not be reviewed in the current rate case due to the timing of project completion and normal delays in compiling and reporting actual project costs. The CT-1 investment included in rate base for settlement purposes and proposed to be recognized in RAM is conservatively quantified while allowing the Parties and the Commission to review, evaluate and consider the much higher actual cost of CT-1 in the "next" HECO rate case.

<sup>23</sup> Tr. 448-467.

were not supported by any prefiled testimony or financial analytical support.<sup>24</sup> The Consumer Advocate respectfully requests that the Commission approve only a ratemaking approach that includes in rate base the average \$163 million CT-1 investment within year-end (and not beginning of year) 2009 rate base, with no immediate recovery of depreciation expenses or annualization of CIP CT-1 O&M. This treatment of CT-1 costs was an integral part of the overall settlement agreement reached by the parties, and is clearly sufficient to satisfy HECO's overall financial needs or the Company would not have accepted this approach in Settlement.

No annualization of return or O&M, investment costs above \$163 million, or post-in service AFUDC accruals should be allowed for CIP CT-1 as these treatments are inconsistent with the Settlement, would unreasonably burden ratepayers with excessive CT-1 costs and are unsupported by record evidence. Furthermore, as articulated in the Consumer Advocate's Comments on HECO's Motion for Second Interim Increase For CIP Revenue Requirements, or In the Alternative, To Continue Accruing AFUDC for the CIP CT-1 Project, AFUDC continuation is particularly objectionable because continued accrual of carrying charges on a potentially excessive total investment balance will serve to only compound higher costs for potential future ratemaking adjustment, while

---

<sup>24</sup> As discussed above in the procedural history, HECO filed its Motion for Second Interim Increase seeking Commission approval to implement an increase to recover costs associated with CIP CT-1. HECO offered three different options for cost recovery: 1) a second interim increase of \$12.7 million based on a finding that CT-1 is used and useful; 2) a second interim increase based on a finding that CT-1 should be treated as property held for future use; and 3) Allow HECO to reclassify the costs as construction work in progress and allow the continued accrual of Allowance for Funds Used During Construction ("AFUDC") until the unit is used and useful (as defined by HECO, that would occur when an operational supply of biodiesel is obtained). Since HECO's Motion for Second Interim Increase was used after discussion and the Panel Hearing, there is no prefiled testimony or financial analytical support.

adding to the complexity of any future CT-1 valuation adjustments.<sup>25</sup> Continuation of AFUDC and/or depreciation deferrals would create a new regulatory asset that could only be recorded by HECO if future recovery were deemed probable, but with the concerns noted by the Commission regarding cost overruns in completing CT-1, ultimate recovery of any regulatory asset added to such over-runs could not at this time be considered probable.<sup>26</sup> In its closing statement, HECO counsel urged the Commission to consider allowing continuation of AFUDC on CT-1 investment commencing from August 3, 2009 to the Commission's designated used and useful date.<sup>27</sup> The Consumer Advocate objects to this AFUDC continuation proposal as inconsistent with the Settlement among the Parties and would compound the cost overruns on the investment and could ultimately result in ratepayers being held fully responsible for return on the investment after completion of construction without regard to any used and useful determination. Instead of adding AFUDC to CT-1 costs, the Consumer Advocate urges the Commission to grant incremental rate relief for CT-1 in a second interim rate order, or in an expedited Final Order, in amounts not exceeding the revenue that was eliminated in the Interim with respect to CT-1.

Management audits were also discussed in the panel hearings, including the possibility of a focused construction cost audit for CT-1.<sup>28</sup> On this point, Consumer Advocate's witness Mr. Brosch explained that the Settlement treatment of CT-1 for

---

<sup>25</sup> The possibility of continued AFUDC was discussed at Transcript 811-817.

<sup>26</sup> Tr. 456.

<sup>27</sup> Tr. 1360.

<sup>28</sup> See Hearing Exhibit CA-4, Tr. 836.

purposes of this case does not reflect either full annual costs or the ultimate construction costs that exceeded original estimates, such that the Commission could conclude the issue for purposes of this case leaving HECO to seek recovery of the rest of the money either in the RAM proceeding, if it were approved, or in the next formal rate case, if RAM were not approved. In any event, the intervening time might create an opportunity for a more focused analysis of the ultimate costs of CT-1 culminating in some very specific recommendations regarding how much of that ultimate cost should be permanently accounted for in rate base and how much, if any, should be written down on the Company's books prospectively.<sup>29</sup> The Consumer Advocate would support a Commission Decision that directs HECO to fund a consultant retained by the Commission to investigate the prudence of HECO's construction process and ultimate costs incurred for CT-1, culminating in testimony supportive of any ratemaking adjustments in the next HECO rate case. *Management and focused regulatory audits* are discussed in a subsequent section of the Consumer Advocate's Opening Brief.

**B. HCEI EMPLOYEES/COSTS ARE EQUITABLY RESOLVED IN THE SETTLEMENT.**

In its Rate Case Updates, HECO proposed the addition of 13 new employees' wage and benefit expenses for positions that were created to address increased workloads arising from the HCEI Agreement as well as other initiatives.<sup>30</sup> The Commission expressed its concern with HECO employee count increases in the Interim,

---

<sup>29</sup> Tr. 838-837.

<sup>30</sup> HECO Rate Case Updates, HECO T-1, pages 15-21, Attachment 3 identifies 12 new HCEI-related positions. In Exhibit 3 to its Revised Statement of Probable Entitlement dated July 8, 2009, HECO identified 13 such positions.



noting that staffing increases were questionable given the decline in sales, the transition of energy efficiency programs to a third-party administrator, and the potential disallowance of CT-1.<sup>31</sup> In the panel hearing, HECO's witness indicated that 10 of the 13 new positions have already been hired and the costs are being incurred and two more positions are in the process of being filled.<sup>32</sup> HECO witnesses also explained the work that was being done by its new employees in connection with various clean energy initiatives.<sup>33</sup> In its evaluation of HECO staffing and labor costs, the Consumer Advocate was also concerned with the increased labor/benefit costs for the Company's asserted need for 13 new positions. However, HECO's Rate Case Updates also proposed an employee vacancy adjustment, based upon a time series regression analysis that was used to quantify an offsetting downward adjustment to wages and benefit expenses of \$1.7 million, so as to account for HECO's persistently vacant positions.<sup>34</sup>

*The Consumer Advocate's and DOD's analysis of HECO staffing changes and vacancy rates culminated in an even larger downward adjustment for employee vacancies.<sup>35</sup> The Settlement provides for a substantial agreed-upon vacancy adjustment reducing test year expenses by \$2.5 million.<sup>36</sup> In contrast, it should be noted that the entire cost of the 13 new positions identified as a concern in the interim*

---

<sup>31</sup> Interim, July 2, 2009, page 14.

<sup>32</sup> Tr. 38.

<sup>33</sup> Tr. 38-53.

<sup>34</sup> HECO Rate Case Updates, HECO T-1, page 23.

<sup>35</sup> CA-T-3, pages 33-42; Exhibit CA-101, Schedule C-13.

<sup>36</sup> Settlement, Exhibit 1, pages 22-24.

contributed \$1,051,000 in labor, employee benefits and payroll taxes to test year expenses.<sup>37</sup> Thus, the removal of \$2.5 million to account for employee vacancies in the Stipulation represents about 2.5 times the entire cost of the identified new HCEI positions and provides considerable assurance that HECO labor-related costs are not overstated in the parties' Stipulation.

**C. HCEI NON-LABOR EXPENSES ARE EQUITABLY RESOLVED IN THE SETTLEMENT.**

The Interim also noted a concern with HCEI-Related Outside Services expenses.<sup>38</sup> The Settlement removed \$2.4 million of such expenses, for separate recovery through the pending Clean Energy Initiative Surcharge ("CEIS") mechanism under consideration in Docket No. 2007-0416.<sup>39</sup> As a result, approval of the Settlement will result in no recovery of such costs through base rates, while HECO must submit and receive approval for any cost recovery through future CEIS procedures. Consumer Advocate's witness Mr. Brosch explained in the panel hearing why individually significant outside services costs associated with Big Wind and other HCEI-related studies should be deferred and considered for separate CEI surcharge recovery by the Commission, rather than embedding an estimate of such costs in base rates.<sup>40</sup> This outcome is reasonable and imposes upon HECO the burden to justify incremental

---

<sup>37</sup> Revised Statement of Probable Entitlement, Exhibit 3, page 3, indicates that O&M labor costs of \$697,000, benefits costs of \$303,000 and payroll taxes of \$51,000 were removed by HECO in compliance with the interim to eliminate all 13 positions.

<sup>38</sup> Interim, July 2, 2009, page 9.

<sup>39</sup> Settlement, Exhibit 1, pages 30-31.

<sup>40</sup> Tr. 86-91.

outside service costs it incurs but will not recover through base rates, subject to Commission review and approval in CEIS surcharge proceedings.

#### **IV. RETURN ON EQUITY.**

Due to the unique circumstances involved in this proceeding, the Consumer Advocate (as well as other parties) is proposing two sets of cost of capital recommendations – one set that assumes that the decoupling mechanism is not approved and one set that assumes that decoupling is approved. The approval of decoupling would clearly decrease the risk of HECO and correspondingly reduce the Company's cost of common equity and total cost of capital.

##### **A. CAPITAL STRUCTURE.**

All of the parties in this proceeding agree that the following average test year 2009 capital structure be used to establish the overall cost of capital for HECO:

<u>Capital Item</u>	<u>Percent</u>
Short-term Debt	0.00%
Long-term Debt	40.76%
Hybrid Securities	1.96%
Preferred Stock	1.46%
Common Equity	55.81%

(Source: HECO R-2001)

These percentages were agreed to and reflected in the proposed stipulation dated May 15, 2009 (HECO RT-20, page 9). The Consumer Advocate continues to believe

that the capital structure values stipulated to represents reasonable amounts to use in setting rates in the instant proceeding.

In addition, these percentages apply to both sets of cost of capital recommendations cited above (i.e., with and without decoupling). The decoupling mechanism only impacts the cost of common equity – not the capital structure and the cost rates of fixed-cost items.

#### **B. COST RATES FOR FIXED COST CAPITAL ITEMS.**

The cost rates for fixed cost capital items normally are not in dispute in regulatory proceedings such as this one. To this regard, the following cost rates were agreed to in the proposed stipulation of the parties:

<u>Capital Item</u>	<u>Cost Rate</u>
Long-term Debt	5.81%
Hybrid Securities	7.41%
Preferred Stock	5.48%

(Source: HECO R-2001)

Notwithstanding the pre-hearing stipulation of these cost rates, the Consumer Advocate demonstrated in the hearing that the cost of long-term debt proposed by HECO failed to reflect the decline in debt yields during 2009. Ms. Sekimura acknowledged that the 7.00 percent “forecast estimated interest rate for incremental long-term debt” (as shown in HECO RT-20) exceeded the actual cost incurred by HECO in July of 2009, which was 6.50 percent. (CA-RIR-35; Tr. 1068)

The Consumer Advocate proposes that HECO's cost of long-term debt be adjusted to reflect the lower cost of "incremental long-term debt" which is now known to be 6.50 percent, or less than the 7.00 percent rate used by HECO.

### **C. COST OF COMMON EQUITY.**

The cost of common equity or ROE remains as the primary cost of capital issue in this proceeding. The "updated" cost of equity proposals of the respective parties are as follows:

<u>Party</u>	<u>ROE Range</u>	<u>W/O Decoupling</u>	<u>With Decoupling</u>	
HECO	10.75% - 11.00%	11.00%	10.75%	HECO Hearing Ex 7
CA	9.50% - 10.50%	10.00%	9.50%	CA Hearing EX 3
DOD	9.25% - 10.25%	9.75%	9.50%	DOD T-2 page 2

The Consumer Advocate believes that Mr. Parcell's cost of common equity analyses are correct and compelling. Mr. Parcell's recommended range of 9.50 percent to 10.50 percent for the cost of equity is derived by his use of the following three methodologies:

<u>Methodology</u>	<u>Conclusion</u>
Discounted Cash Flow	9.5% - 10.0%
Capital Asset Pricing Model	8.2%
Comparable Earnings	9.5% - 10.5%

(Source: CA Hearing Exhibit 3)

Mr. Parcell's three cost of equity methodologies were applied to four groups of "proxy" electric and combination electric/gas utilities. Two of these groups were selected by

Mr. Parcell using criteria used by the Commission and himself in previous HECO proceedings, and the other two groups were those used by HECO's witness Mr. Morin (CA-T-4, pages 30-33).

Mr. Parcell's 9.5 percent to 10.5 percent return on equity recommendation is essentially the mid-point between the recommendation of DOD's witness Stephen Hill (9.5%) and HECO's witness Morin (10.75% - 11.0%).

It is readily apparent that the cost of common equity for HECO has declined in recent years. This is evident from the following progression of return on equity requests by the Company in its past few rate proceedings:

- Docket No. 04-0113      2005 TY      11.50% ROE Requested 10.70%  
ROE Settled.
- Docket No. 2006-0386      2007 TY      11.25% ROE Requested 10.70%  
ROE Settled.
- Docket No. 2008-0083      2009 TY:
  - Initial Filing      11.25% ROE Requested 10.50% Inter. Settled; and
  - Update      11.00% ROE w/o Decoupling.

An application of the past comparisons between the requested returns on equity and authorized (i.e., settled) returns on equity indicates a 75 basis point to 80 basis point differential. A corresponding reduction in the 11.0 percent (exclusive of approval of decoupling) return on equity request of HECO would result in an approved return on equity in this proceeding of about 10.2 percent to 10.25 percent, which is very close to the Consumer Advocate's 10.0 percent recommendation (without decoupling).

In addition, the 25 basis point reduction in HECO's witness Mr. Morin's return on equity recommendation, as reflected in his update (i.e., from 11.25 percent to 11.00 percent), is indicative of a declining cost of common equity for the Company.

#### **D. IMPACT OF DECOUPLING AND OTHER RATE MECHANISMS.**

There is no dispute in this proceeding that, should the Commission approve the decoupling mechanisms proposed by HECO and the Consumer Advocate, there would be a corresponding reduction in the risk and required cost of equity for the Company. HECO's witness Mr. Morin proposes a 0.25 percent reduction in HECO's cost of equity with decoupling (HECO RT-16, page 68) and the Consumer Advocate's witness Mr. Parcell proposes a 0.50 percent reduction (CA-T-4, pages 53-54).

There is also no dispute that HECO's decoupling proposal is far reaching and comprehensive. It essentially affects all revenues (CA-RIR-31). As discussed in much accurate detail in Docket No. 2008-0244, if both the RBA and RAM are approved by the Commission as proposed by the HECO Companies and Consumer Advocate, these rate mechanisms will help to smooth earnings by making HECO's revenues insensitive to sales and also allow for timely recovery of changes in cost and/or investments as well.

It is important to recognize that HECO's ratepayers are "captive" participants in any decoupling proposal. Decoupling essentially transfers a significant portion of HECO's risks from its shareholders to its ratepayers (CA-T-4, pages 52-53). It is not only fair, but mandatory, that this transfer of risks be recognized by requiring ratepayers to compensate HECO through a lower cost of common equity.

The Consumer Advocate believes that witness Mr. Parcell's proposed 50 basis point reduction in the cost of common equity is the minimum reduction, should decoupling be adopted in Hawaii. If adopted, this 50 basis point reduction reflects the lower end of Mr. Parcell's 9.50 percent to 10.50 percent cost of equity range, where, with a 10.0 percent mid-point value (CA-T-4, page 54) a 50 basis point reduction results in 9.50 percent. This 50 basis point reduction in the cost of equity is also justified by the interest rate differentials between A rated and Baa utility bonds and preferred stocks (CA-T-4, page 53 and CA-S-415).

**V. INFORMATIONAL ADVERTISING.**

HECO has proposed a large increase in its Account 911 Informational Advertising non-labor expenses, seeking rate recovery of non-labor expense for the test year in the amount \$1,116,000. The Consumer Advocate has proposed a ratemaking adjustment to focus Commission attention on this issue and to seek clarification of the Commission's intentions regarding HECO-provided conservation advertising when it denied HECO's request to continue the Residential Customer Energy Awareness ("RCEA") Program in its Order dated November 14, 2008 in Docket No. 2007-0341. The Consumer Advocate's adjustment is set forth in Exhibit CA-101 at Schedule C-21 and reduces HECO's proposed test year expense to a more reasonable \$342,000 level, resulting in a negative \$774,000 adjustment. The Consumer Advocate's proposed lower level of test year informational advertising was based upon continuation of HECO's average actual spending in the last three calendar years 2006 through 2008, exclusive of RCEA advertising that was discontinued by Commission order. Utilization



of historical actual spending amounts in the Consumer Advocate's advertising adjustment is based upon the presumption that HECO's actual spending in prior years is indicative of the prudent and necessary level of advertising over multiple years when programmatic funding, like under the RCEA program, is separately considered and either provided or denied by the Commission.<sup>41</sup>

The question before the Commission is whether HECO should be allowed to recover through its base rates substantially increased funding for advertising that serves to replace the RCEA funding that was recently terminated by the Commission's Order in Docket No. 2007-0341. HECO does not deny that its request is for base rate recovery of increased advertising expenditures that would replace the RCEA program.<sup>42</sup> In Rebuttal Testimony, HECO witness Mr. Alm argues that several policy reasons support the need for such continuing energy awareness advertising by the Company:

- HECO is responsible for promoting awareness of energy efficiency to meet the State's Renewable Portfolio Standards ("RPS") and Greenhouse Gas ("GHG") emission laws and advertising funded by ratepayers is necessary to support this effort.<sup>43</sup>
- According to survey results, the Company's advertising program has been successful at promoting energy efficiency.<sup>44</sup>

---

<sup>41</sup> CA-T-1, page 117.

<sup>42</sup> HECO's witness Mr. Hee stated that hypothetical continuation of the RCEA program would reduce the amount of advertising needed through base rates. Tr. 929

<sup>43</sup> HECO RT-1, pages 47-49.

<sup>44</sup> Id. page 50.

- The Public Benefit Fund ("PBF") Administrator is faced with ambitious and necessary energy efficiency goals, with tight program budgets and during a challenging economic environment and the PBF Administrators budget for advertising is "small" making it, "...unlikely it will be able to increase, let alone maintain, the current level of energy awareness established by the Company's efforts."<sup>45</sup>
- HECO's advertising will focus on reducing energy use during peak times, which is not expected to be a primary focus of the PBF Administrator's advertising.<sup>46</sup>

With these arguments, HECO does not dispute that the PBF administrator is now primarily responsible for the design, promotion and administration of the energy efficiency programs that were previously administered by HECO. Instead, HECO is requesting replacement funding for the now discontinued RCEA program that was historically used to support general public awareness of energy efficiency when HECO administered such programs. The Commission's Order discontinuing the RCEA funding did not direct HECO to continue energy efficiency awareness advertising, nor did it instruct HECO to request replacement funding for such advertising in its next rate case. Under these circumstances, the Commission should clarify whether it intended both HECO and the PBF Administrator to operate energy efficiency awareness advertising programs at ratepayers' expense, even if HECO's advertising is additive to the

---

<sup>45</sup> Id. pages 51-52.

<sup>46</sup> Id. page 53.

advertising being done by the new PBF Administrator. If it was not the Commission's intention to allow both the HECO and the PBF Administrator to conduct energy efficiency awareness advertising programs at ratepayers' expense, HECO should not be allowed to recover the estimated amounts associated with this function.

HECO's Vice President of Corporate Relations, Ms. Unemori, noted in her Rebuttal Testimony that the advertising budget of the PBF Administrator averages out to just \$404,000 per year,<sup>47</sup> which she claimed, "...does not appear [to] be sufficient to provide the level of energy awareness that HECO was able to deliver in 2007 to 2008."<sup>48</sup> In her opinion, HECO must continue its mass media advertising even though some of HECO's advertising will complement the PBF Administrators' efforts by recommending actions "...that direct customers to the PBF Administrator's programs."<sup>49</sup> The Consumer Advocate submits that HECO should not second guess the planning and budgeting work that has been done by the PBF Administrator. If HECO contends that the PBF Administrator's budget is too low, but the Commission clarifies its intent by not allowing HECO to continue energy efficiency advertising, HECO should work with the Commission to help the PBF Administrator to develop an appropriate level of advertising budget. The new PBF Administrator should remain responsible to determine how it can best optimize advertising and other resources to meet its contractual commitments and performance goals that were negotiated with the Commission. Indeed, obligating ratepayers to fund additional energy efficiency

---

<sup>47</sup> HECO RT-10A, page 3.

<sup>48</sup> Id. page 5, line 3.

<sup>49</sup> Id. page 7, lines 3-4.

awareness advertising through the HECO electric rates they pay serves to create an improper subsidy to the PBF administrator that will frustrate the proper operation of its contract with the Commission. That contract provides for incentive payments, at ratepayer's expense, of up to \$1.6 million dependent upon measured achievement of certain energy efficiency results.<sup>50</sup> HECO's Executive Vice President was asked in the hearing about this subsidy problem and, rather than dispute this premise, he responded as follows:

- Q. And along those lines, HECO's energy efficiency awareness advertising is charged to customers and proves to be very effective at driving customers toward DSM programs. Is it fair to make ratepayers pay higher performance compensation to SAIC under contract Attachment C than would have been earned by SAIC without such HECO advertising?
- A. You know I understand the conceptual unfairness there. I guess my view is the more the public saves, the more it saves; and, that, you know, if our combined efforts get it there or their efforts alone get it there, however we get it there, everybody wins; and, if that means they make a little more than an incentive payment, I still think we all win in the long run as a society. (Tr.955)

The Consumer Advocate does not support Mr. Alm's acceptance of unearned PBF Administrator incentive payments, at ratepayers expense and without regard to SAIC performance, if added incentives result from HECO's ratepayer-funded energy awareness advertising.

In Rebuttal, HECO indicated that it was incurring advertising expenses through May of 2009 at a level supportive of a larger rate case allowance than has been recommended by the Consumer Advocate.<sup>51</sup> The Consumer Advocate submits that

---

<sup>50</sup> Tr. 953.

<sup>51</sup> HECO RT-10A, page 10, line 3.

HECO's discretionary spending levels while a rate case is pending do not provide justification for ongoing rate recovery at such levels. A similar question was raised during closing arguments by Chairman Caliboso, regarding possible updates of the three year average spending used by the Consumer Advocate to include HECO higher recent spending in early 2009.<sup>52</sup> The Consumer Advocate has not examined the reasons for HECO's more expansive advertising expenditures in early 2009 and therefore cannot comment upon whether they contain elective spending on the same types of RCEA replacement advertising that is at issue pending Commission clarification on whether such advertising is appropriate for rate recovery. Hypothetically, a utility company can choose to implement budgetary constraints until a rate case proceeding, then increase its spending. Such actions might justify a higher normalized amount. Thus indicating the actual 2009 advertising expense in the three year average might not be reasonable without proper analysis. The important point, however, is whether the Commission intended for advertising efforts to be duplicated. If not, the Commission should make its intent clear and deny HECO the opportunity to recover the Company's budgeted amount of informational advertising from ratepayers. The Consumer Advocate agrees with the importance of having educated consumers and if the Commission's intent was for the PBF Administrator to be responsible for that education through informational advertising, the Commission can require the PBF Administrator to take the appropriate actions or select another vendor to meet the Commission's requirements.

---

<sup>52</sup> Tr. 1353.

Finally, HECO argues that there are general types of information the Company has an obligation to provide to its customers through advertising beyond energy efficiency. These include the provision of information about general electrical safety, equipment protection, Rule 16 information on rights for submitting damage claims, and outage prevention education.<sup>53</sup> The Consumer Advocate agrees that some amount of HECO advertising has always been necessary for these purposes. Mr. Hee confirmed in the hearings that the Company has always had a need to provide a certain amount of safety and informational advertising and that its historical spending for these purposes has been adequate.<sup>54</sup> These ongoing information needs explain why HECO's average actual spending on advertising in 2006 through 2008 properly serves as the basis for the Consumer Advocate's test year advertising expense recommendation -- HECO was assumed to have satisfied its general advertising obligations in these prior years.

## **VI. MANAGEMENT AUDITS.**

The Commission noted in its interim an interest in considering the use of management audits in the regulation of HECO and invited the parties to address such audits in the panel hearings.<sup>55</sup> Consumer Advocate's witness Mr. Brosch explained in his Supplemental Testimony the need for thoughtful design and management of management audits that are aimed at solving specific problems that are important to the determination of just and reasonable rates. Mr. Brosch identified a series of regulatory

---

<sup>53</sup> HECO RT-10A, page 8, lines 15-23.

<sup>54</sup> Tr. 935 and 937.

<sup>55</sup> Interim, page 16.

topics important to the regulation of HECO, including the Company's troubled Customer Information System ("CIS") project, the East Oahu Transmission Project ("EOTP") and the cost overruns related to CIP CT-1 that could all benefit from a focused audit of management prudence and reasonableness of incurred costs. A series of procedural details involving solicitation of proposals, qualifications reviews, conflicts of interest and project management were described by Mr. Brosch to help assure a useful work product will result from any audits that are undertaken.<sup>56</sup>

Hearing Exhibit CA-4 was developed to summarize the Consumer Advocate's recommendations for discussion in the panel hearing. Mr. Brosch explained that several of the listed topics were now very timely for a focused prudence audit, because HECO has incurred substantial, but potentially questionable costs for which the Company is expected to seek recovery in its next rate case, including the CIS project, the EOTP and the balance of CT-1 costs that are limited by the Settlement agreement in the instant rate case.<sup>57</sup> Other known, but less immediate, audit needs arise if the Commission: (1) approves decoupling with a productivity offset, creating a potential need for more analysis and development of a productivity study of the HECO Companies, or (2) desires independent review of HECO's clean energy/RPS performance as a condition of decoupling continuation. Finally, the series of RAMs now effective or proposed for implementation could benefit from financial attest audits.<sup>58</sup> Recognizing the need to prioritize among this list of potential topics, the Consumer

---

<sup>56</sup> CA-ST-1, pages 11-15.

<sup>57</sup> HECO Counsel, in closing statements, indicated support for a "targeted audit process" to examine CT-1 cost overruns. Tr. 1366-1367.

<sup>58</sup> Tr. 836-844.

Advocate respectfully recommends immediate initiation of the CIS,<sup>59</sup> CIP CT-1, and EOTP focused management prudent audits, subject to HECO funding and future rate recovery and the procedural approaches described in CA-ST-1, as these are the most certain areas of potential controversy expected to be material issues in the next HECO rate case.

## **VII. DECOUPLING, ECAC AND PPAC RATE ADJUSTMENTS.**

The Commission's Final Order in this rate case would serve as the baseline for future decoupling calculations, as set forth in the RBA and the RAM that are pending Commission approval in Docket No. 2008-0274. Specifically, the authorized base revenues would be subject to reconciliation through the RBA while the labor and non-labor expenses set forth in the Order would be subject to formulistic adjustment in future RAM calculations. It should be noted by the Commission that the rate case Settlement, while contemplating an outcome consistent with the Consumer Advocate's and HECO's Joint Final Statement of Position in Docket No. 2008-0274, is not contingent upon any particular outcome in that Docket. However, when the Commission considers the disputed Return on Equity issue discussed separately herein, consideration should be afforded the risk reduction and other financial benefits HECO would receive upon approval of decoupling.

---

<sup>59</sup> The need for a management audit related to the CIS may be somewhat mitigated if HECO will not be seeking to include the CIS in its next rate proceeding. As set forth in letter dated December 10, 2009, HECO has indicated that it intends to seek a new vendor. Thus, the in-service date for a new CIS is in question. If, however, HECO seeks to recover already incurred expenses related to its initial contract with First Data Corporation and its successor, Peace, in its next rate case or any other rate recovery mechanism, an audit may still be necessary.



The Consumer Advocate and HECO reached agreement on the ECAC to be implemented in this proceeding. The Consumer Advocate filed testimony addressing the agreed upon ECAC's compliance with Act 162 requirements.<sup>60</sup> The ECAC provides for a fixed sales heat rate by type of fuel, including bio-fuels if CT-1 is operated using bio-fuels.

Under HECO's proposed PPAC, expenses incurred for purchased capacity, O&M charges and other non-energy purchased power payments approved by the Commission would be recovered through a purchased power adjustment clause surcharge that will be adjusted monthly and reconciled quarterly. In contrast, fuel related expenses and purchased energy expenses would continue to be recovered through base rates and through the ECAC. HECO's proposed PPAC is referenced within Section 30 of the Energy Agreement. As a party to the Energy Agreement, the Consumer Advocate has committed to the fundamental need for a PPAC. In the instant proceeding, the Consumer Advocate therefore considered issues of implementation and quantification in assessing the reasonableness of this surcharge. The Consumer Advocate recommends that HECO be required to file its calculations<sup>61</sup> with the Consumer Advocate and the Commission, at least quarterly and that such calculations be reviewed to ensure that customers are appropriately charged for PPAC-recoverable purchase power costs. Although, as a general policy matter, the Consumer Advocate

---

<sup>60</sup> See CA-ST-2, pages 3-11.

<sup>61</sup> The Commission should require HECO's filing to include all necessary workpapers and supporting documentation that would allow the Consumer Advocate, the Commission and other parties to validate that HECO is not recovering costs more than once through the different cost recovery mechanisms beyond base rates that will be available to HECO. See CA-ST-2, pages 11-13.

considers pass through mechanisms and riders that track changes in costs to be appropriate only under certain limited circumstances,<sup>62</sup> the Consumer Advocate finds HECO's proposed PPAC to be reasonable and compliant with the Energy Agreement as well as the Commission's recent Feed-in Tariff Decision and Order.<sup>63</sup>

### **VIII. CONCLUSION AND RECOMMENDATION.**

The Consumer Advocate, HECO and the DOD have agreed upon the level of rate relief that is sufficient to meet HECO's test year 2009 revenue requirement while maintaining the Company's financial integrity, except for the issues of ROE and informational advertising. Commission entry of a Final Order consistent with the Settlement, and resolving the ROE and advertising issues as recommended above, is appropriate at this time. The \$79.8 million rate increase in the Settlement has been agreed to by HECO as adequate to meet its overall financial needs and should not be exceeded in the Commission's Order. In agreeing upon this amount, the Parties to the Settlement recognized that any future rate relief from decoupling or HCEI surcharges was uncertain and subject to future Commission approval; and, for this reason the Commission should recognize the Settlement Agreement is not contingent upon these other matters.

The Consumer Advocate also recommends that HECO be ordered to fund focused management prudence audits of the CIS, CIP CT-1, and EOTP projects to be

---

<sup>62</sup> See Consumer Advocate's response to PUC-IR-113.

<sup>63</sup> Tr. 621-626, 646-650.

conducted under the direction of the Commission, with input from the Consumer Advocate, to culminate in a report and testimony in HECO's next rate case.

DATED: Honolulu, Hawaii, January 5, 2010.

Respectfully submitted,

By 

JON S. ITOMURA

Attorney for the

DIVISION OF CONSUMER ADVOCACY

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S OPENING BRIEF** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

DARCY ENDO-OMOTO  
VICE PRESIDENT  
GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, Hawaii 96840-0001

1 copy  
by hand delivery

DEAN K. MATSUURA  
MANAGER- REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, Hawaii 96840-0001

1 copy  
by hand delivery

THOMAS W. WILLIAMS, JR., ESQ.  
PETER Y. KIKUTA, ESQ.  
DAMON L. SCHMIDT, ESQ.  
GOODSILL, ANDERSON, QUINN & STIFEL  
1800 Alii Place  
1099 Alakea Street  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

Counsel for Hawaiian Electric Company, Inc.

DR. KAY DAVOODI  
NAVFAC HQ ACQ-URASO  
1322 Patterson Avenue, S.E. Suite 1000  
Washington Navy Yard  
Washington, DC 20374-5065

1 copy  
by U.S. mail

JAMES N. MCCORMICK, ESQ.  
THEODORE E. VESTAL, ESQ.  
ASSOCIATE COUNSEL  
NAVAL FACILITIES ENGINEERING COMMAND, PACIFIC  
258 Makalapa Drive, Suite 100  
Pearl Harbor, HI 96860-3134

1 copy  
by U.S. mail

Counsel for Department of Defense

DATED: Honolulu, Hawaii, January 5, 2010.

A handwritten signature in cursive script, appearing to read "James N. McCormick", is written over a horizontal line.